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From Productive Work to Capability-Enhancing Work: Implications for Labour Law and Policy

Nicolas Bueno

Center for Human Rights Studies, University of Zurich, Switzerland

ABSTRACT

What makes work useful, on what grounds and for whom? Classical economists distinguished between productive and unproductive labour. They focused primarily on productive labour and its ability to generate wealth for the economy as a whole, which influences why economic policies currently prioritize economically productive work over other forms of work. After reviewing the relationships between work and capabilities in the capability approach, this article addresses the individual and collective impacts of work on capabilities. It introduces a more complex and human-centred distinction between capability-enhancing and capability-reducing work. Finally, it proposes a capability-informed labour policy and designs new rights to assist in better aligning individually and socially capability-enhancing work. It shows how this policy has the potential to free from the economic need to work.

KEYWORDS

capabilities; labour law; labour policy; productive and unproductive labour; care work; meaningful work; human capital

1. Introduction

Classical economists have distinguished between productive and unproductive forms of labour. They emphasised the ability of productive labour to generate wealth for the economy as a whole (Smith [1776], 1999, 151; Mill [1848], 1909, 31–45) as presented in Section 2. This distinction influences the way domestic and international labour policies currently value work and primarily encourage work that produces wealth. This article shows how the capability approach can help rethink this distinction and introduces a more human-centred distinction between "capability-enhancing labour" and "capability-reducing labour" at the individual and societal level.

In order to establish this new distinction, Section 3 reviews the relationships between work and capabilities in the capability approach. It shows that the capability approach has mainly discussed the impacts of work on individual

CONTACT Nicolas Bueno Nicolas.Bueno@uzh.ch Center for Human Rights Studies, University of Zurich, Rämistr. 74, 8001 Zürich

freedoms of workers, which moves the debate from the macroeconomic level to the worker. This section identifies three main relationships between work and capabilities: capabilities *through* work, capabilities *in* work and the capability *for* work (Bonvin 2012), particularly for meaningful work (Weidel 2018; McGrana-han 2020). This literature provides a good picture of what can be considered as *individually* capability-enhancing work. Section 4 complements this literature by bringing back the societal dimension of work. It discusses the impact of work, productive and unproductive, on the capabilities of others. It shows that productive labour can sometimes reduce the capabilities of others and that unproductive labour can enhance the capabilities of others, obliterating the assumption that productive labour is always more useful than other forms or work. This section aims to provide a picture of what can be considered as *socially* capability-enhancing labour.

Section 5 shows how the distinction between productive and unproductive labour influences labour policy and labour law. It proposes an alternative labour policy informed by the capability approach that aims at increasing the efficient creation of capabilities through work. Building on the emerging capability approach labour law (Langille 2019a), it designs new rights that would be required to move towards more individually and socially capability-enhancing work.

2. Productive and Unproductive Labour

Historically, physiocrats have considered that only labour employed in agriculture was productive. For mercantilists, only labour employed in export industries was productive (Schumpeter [1954], 2006, 599; Mazzucato 2018, 22–32). The idea of productive labour therefore evolves with what society considers useful to produce. During industrialisation, Adam Smith and John Stuart Mill, among others, also discussed the distinction between productive and unproductive labour. Since then, labour policy has consistently favoured work that produces wealth.

In *The Wealth of Nations*, Adam Smith defined productive labour as an activity that "adds to the value of the subject upon which it is bestowed", whereas unproductive labour, such as the labour of military officers, churchmen, lawyers, physicians, men of letters of all kinds and musicians, does not fix or realise itself in any particular subject or vendible commodity ([1776] 1999, 430). Smith's goal was to increase the wealth of a nation, which he defined as the "whole annual produce of a country's land and labour" (356). Wealth could therefore be increased by no other means than by increasing either the number of productive labourers or their productive power (105, 443). As a result, productive labour was the labour that directly produces material goods and, ultimately, wealth (Perrotta 2018, 34). Useful labour and productive labour appear to have been used as synonyms (Bladen 1960, 626), and Smith (105) used them as synonyms.

In *Principles of Political Economy*, John Stuart Mill ([1848] 1909, 31–45) returned to this distinction. In the chapter *Of Unproductive Labour*, however, he emphasised that unproductive was not a synonym for useless. Unproductive labour could be as useful as, or even more useful than, productive labour ([1848] 1909, 49). He argued that labour does not produce wealth but rather utilities of three kinds: utilities embodied in material objects; utilities embodied in human beings, such as the labour of physicians or teachers; and utilities as simple pleasure given, such as the labour of musical performers or actors (50). Lacking a measure to assess the usefulness of labour in light of utilities, he decided, albeit reluctantly, not to depart from the traditional meaning of productive labour given by Smith, which he only extended by including all kinds of labour instrumental to the production of wealth. One sentence summarises the paradox between useful and productive labour that Mill deplored: "The labour of saving a friend's life is not productive, unless the friend is a productive labourer" (50). Therefore, Mill also considered the usefulness of productive labour to be in producing wealth, whether directly or indirectly.

Some twenty years later, Karl Marx ([1867] 1990, 307–319) explained in *Capital* the mechanism under which a capitalist extracts the economic value produced by a worker. He presented the capitalist as having two objectives: to produce an article destined to be sold; and to produce a commodity greater in value than the sum of the values of the commodities used to produce it, including the labour power purchased on the market (293). He then measured the degree of exploitation of labour by comparing the working time during which the worker reproduces the value of the worker's own labour power to the working time during which the worker produces a surplus value for the capitalist (320–9). Ultimately, Marx showed that the purpose of productive labour in the capitalist process of production was not to generate wealth for the workers or society as a whole but to generate surplus value for employers. As put by Mazzucato (2018, 57), his labour theory of value was an active critique of the system that he saw developing around him. If labour produced wealth, why was labour continuing to live in poverty?

The distinction between productive and unproductive labour fell away with the emergence of the marginal productivity of labour in neoclassical economics (Mazzucato 2018, 62; Perrotta 2018, 129). Marginal productivity of labour states that the value of labour is measured by its economic return in the labour market. In other words, the wage that the employer is prepared to pay reflects the value of a worker. This marginalist revolution led Schumpeter ([1956] 2006, 597) to qualify the distinction between productive and unproductive labour as a "meaningless discussion [that] became a standard item of nineteenth-century textbooks in spite of the increasing awareness of its futility, which eventually killed it."

In fact, the marginal productivity revolution did not "kill" the distinction between productive and unproductive labour. It simply evades the questions of what makes work useful, on what grounds and for whom. These questions were left to the market. More concretely, the idea of marginal productivity has had two main consequences for discussions about the value of labour. First, the usefulness of labour has become a matter of degree rather than of category. As Mazzucato (69) puts it, "defining everything that commands a price as valuable led to the marginalists' conclusion that what you receive is what you are worth." Second, the idea of the marginal productivity of labour makes it impossible to identify any value of labour beyond its price. It therefore consolidates the assumption that productive labour, which has become an equivalent for paid labour, is useful because there is a market for it, and the more it is paid, the more it is worth. This is the notion of productive work, and by contrast unproductive work, used in this piece.

Finally, the human capital theory coined by Schultz (1961) and Becker (1993) in the second half of the twentieth century took for granted that people's skills were to produce wealth (Perrotta 2018, 110–111). Although this approach has been adapted in several ways, it traditionally restricts its value criteria to income growth, looking, for example, at how the economic returns of workers can be improved through education (Wigley and Akkoyunlu-Wigley 2006, 301; Chiappero-Martinetti and Sabadesh 2014). In this regard, presenting human beings as a factor of production under the notion of human capital reflects the current focus placed on economically productive labour.

The following two sections show how the capability approach can question the assumption that productive labour is always useful because there is a market for it, and the more it is paid, the more it is worth. It aims to bring a new distinction between capability-enhancing and capability-reducing work. This discussion begins in Section 3 with a review of relationships between work and capabilities in the capability approach. It shows that the capability approach has focused so far on the impact of work on individual freedoms of the worker which moves the debate from the macroeconomic level to the worker. Section 4 then turns back to the question of work and its impact on the capability of others by discussing the notion of socially capability-enhancing work.

3. The Capability Approach and its Focus on *Individually* Capability-Enhancing Work

Beyond relying only on income and wealth, the capability approach evaluates economic policies in terms of individual capabilities. Capabilities in this approach are defined as the substantive freedom to achieve alternative functionings, what a person may value doing or being (Sen 1999, 75). It focuses on the individual freedom to choose what a person is able to do and to be

(Nussbaum 2011, 20) as the main determinant of wellbeing. More pragmatically, Nussbaum listed capabilities that she considered so central to human beings that their removal makes a life not worthy of human dignity. She included, for instance, being able to live; to have good health; to be adequately nourished; to have adequate shelter; to move freely from place to place; to be secure against violence; to be cultivated by an adequate education; to be able to live in relation to the world of nature; to play and enjoy recreational activities, as well as other central capabilities (33–34).

The capability approach has not systematically assessed the relationships between work and capabilities. There are nevertheless three relationships that have been discussed in the literature. They can be captured under the notions of capabilities *through* work, capabilities *in* work and capability *for* work, particularly for meaningful work. They all focus on the personal impact of work on workers' capabilities, bringing a new perspective on the value of work beyond producing wealth. However, the approach has less accurately analysed the societal impact of work on the capabilities of others, as discussed in section 4.

3.1 Capabilities Through Work

A first relationship between work and human capabilities relates to paid work as a *means* to receive an income in order to have capabilities. Most people must receive an income primarily to expand their central capabilities as listed by Nussbaum. People must work in order to have good health, to be adequately nourished, to have adequate shelter, to move from place to place, and so on. In this relationship, the distinction between productive and unproductive work remains valid. Work is capability-enhancing in this respect as long as it is paid because income is an "admirable general-purpose means for having more freedom to lead the kind of life we have reason to value" (Sen 1999, 14).

However, what matters from the perspective of the capability approach is not only whether labour generates an income but also the extent to which this income can be converted into capabilities. In this respect, the debate has focused on unemployment as income deprivation and its resulting capability deprivation along with the need to generate paid employment to enhance individual capabilities in both developed and developing countries (Amsden 2010; van der Hoeven 2014; Bonvin 2014; UNDP 2015, 32).

3.2 Capabilities in Work

As stated in the *Human Development Report* 2015, which is dedicated to work for human development, work in the capability approach is more than a source of income. Sen on several occasions gave the example of unemployment, stating that even when the income can be compensated by the State through

unemployment benefits, unemployment remains a source of far-reaching capability deprivation which includes deprivation of health and longevity (Sen 1997b 1999, 2000).

As a starting point for the discussion of capabilities in work, Nussbaum (2000, 82) considered that "work must involve being able to behave as a thinking being, not just as a cog in a machine, and it must be capable of being done with and toward others in a way that involves a mutual recognition of humanity". In her list of central capabilities, she also expressly included being able to work "as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers" (2011, 34). Conversely, scholars have described the negative effects that work can have on the capability to be in good health, which applies for both paid (Sayer 2012, 585) and unpaid labour, particularly care work (Friedemann-Sánchez and Griffin 2011).

The debate over capabilities in work has then more specifically focused on freedoms and choices at the workplace. It resonates with debates outside the capability approach on autonomy in work (Veltman 2016, 84; Supiot 2015, 164; 2016, 28; Bueno 2021), which includes the autonomous control of a worker over working processes, working time and work location. In this respect, jobs that allow workers little or no discretion reduce these capabilities (see UNDP 2015, 36; Laruffa 2020, 5). Bonvin (2012) used the notion of "capability for voice" to design the extent to which people are allowed to express their wishes, expectations and concerns in collective decision-making processes. Finally, McGranahan (2020) provided examples of employee-owned and democratic businesses as an important element for capabilities exercised in work. Beyond the distinction between productive and unproductive work, the capability approach is therefore more concerned with ensuring work in which workers can exercise capabilities.

3.3 Capability for Work and for Meaningful Work

A third relationship between work and capabilities relates to the freedom to choose work as a capability in itself. This capability is not only about the freedom to choose *to* work in order to achieve capabilities as presented above. Sen (1999, 114–115) emphasised the freedom to participate in the labour market, which he contrasted with slavery, bonded labour and other forms of unfree labour. Nussbaum (2011, 34) also listed the freedom to seek paid employment on an equal basis with others as a central human capability. Both emphasised this lack of capability particularly for women in developing countries (Sen 1999, 115; Nussbaum 2000, 2011, 9, 2019). Beyond this, the capability to choose work is about the freedom to choose among alternative types of work. Bonvin (2012) captured this idea under the notion of "capability for work" that he defined as "the real freedom to choose the job one has reason to value".

The praise of the labour market to expand the capability to choose work raised critics, in particular by Sayer (2012, 586) for failing to acknowledge that the labour market for wage labour leads, in practice, to a division of labour between a minority that monopolises good-quality work and the more tedious and unpleasant work that is left to others. As brought further by Weidel, external conditions offered by the labour market are not present to adequately and successfully pursue opportunities for personally meaningful labour (Weidel 2018). In this regard, he offered an amendment to Nussbaum's central capability related to work by adding a "capability for meaningful labour". This capability reads as follows: "Being able to freely and successfully pursue an avenue by which a person can engage in meaningful labour, interacting with some aspect of nature (as well as other human beings) in a way that develops their faculties, utilizes practical reasoning, and provides them with a sense of dignity." (79)

The capability for meaningful labour could further benefit from the recent literature on meaningful work (Veltman 2016; Michaelson 2019). Veltman, in particular identifies four dimensions of meaningful work: (1) developing or exercising the worker's human skills; (2) supporting virtues such as honour and pride; (3) providing personal purpose or serving a genuinely useful purpose for others, or (4) integrating elements of a worker's life, such as by building or reflecting personal relationships or connecting a worker to an environmental or relational context with which she deeply identifies (117). Some of these elements also reflect the earlier work by Schumacher (1979, 3) in *Good Work* describing three purposes of human work as: to provide necessary and useful goods and services, to enable the use and perfection of skills and to do so to, and in cooperation with, others.

The capability approach raises an important and critical question here. It shows that the freedom to choose work, which is usually considered guaranteed through labour markets, is limited or non-existent for most workers (see also Veltman 2016, 143; Weidel 2015, 4). For those who have a choice, choices are usually limited among types of market work, but not necessarily to conduct meaningful work beyond paid work. Laruffa (2020, 4) suggested in this regard extending not only the choice for paid work but also opportunities to conduct care work that can be valuable and enjoyable when done out of choice. From the perspective of the capability approach, it is therefore not sufficient to promote productive work if it is meaningless for the person conducting the activity.

In conclusion, the capability approach brings an individual dimension to the question of labour. Beyond the traditional macroeconomic focus on productive work, the attention in the capability approach has been given to the impact of work (or the lack thereof) on individual freedoms of the worker. Normatively, it provides a picture of what can be considered as *individually* capability-enhancing (and reducing) work. However, by doing so, it also omits that work has an impact on the capabilities of others, as discussed in the next section.

4. *Socially* Capability-Enhancing Work

The distinction between productive and unproductive labour, outlined in Section 2, focuses on the value of labour from a macroeconomic perspective for the economy as a whole or, as put by Adam Smith, for the "nation". Aside from being individually capability-enhancing (or reducing), work can also have an impact on the capabilities of others which should not be neglected by the capability approach. In this respect, this section discusses the impacts of work on the capabilities of others under the concept of *socially* capability-enhancing (and reducing) work. More concretely, can the capability approach help to evaluate activities such as producing food, taking care of the elderly as a paid nurse or an unpaid son or daughter, speculating in food or housing as a real estate trader or providing legal services as a lawyer?

There are some good reasons why the capability approach has not generally used capabilities as indicators to evaluate the impact of work on others. One reason is the inexistence of a consensus on what capabilities should be used as such an indicator (Sen 1999, 78). A pragmatic manner with which to deal with the issue, although it is not optimal, is to consider the impacts of work on Nussbaum's central human capabilities. This approach, which is used in this article, is interesting because most people on the planet must primarily work to have those capabilities. Another reason the capability approach has not discussed the impact of work on the capabilities of others may be the risk of instrumentalising human beings to generate social outputs. This bears the risk of undermining choices of what people want to produce. The exercise is nonetheless worth doing to reflect further on the pertinence of fostering productive work in current labour policies.

4.1 Productive Work and the Capabilities of Others

Productive labour produces outputs that can enhance the central human capabilities of others. For example, producing food and clothes and the building of houses, cars and infrastructure to enable travel from place to place can enhance capabilities that most people share. However, the impact of productive work on the capabilities of others requires more scrutiny.

First, goods and services are outputs from work that expand capabilities only to the extent that people can afford them and convert them into capabilities. Producing a good or providing a service that only few can afford does not expand capabilities of those who cannot. Additionally, the exact same output can impact capabilities in different ways. Legal services, to give another example, are generally considered as a homogeneous category of productive work. In terms of capabilities however, advising people affected by water pollution does not have the same impact on the capability for good health as providing the very same legal service for the mining company that causes the

pollution. The latter is nevertheless considered more productive than the former (Bueno 2017, 484). Finally, productive work can produce outputs that may directly reduce people's capabilities. For example, productive activities, such as speculating on food or house prices, may directly reduce the capability to be adequately nourished or to have adequate shelter, especially for those who are economically vulnerable. The capability approach can therefore introduce a more human-centred assessment of productive labour.

The reverse holds also true for categories of work that are considered less productive or unproductive in terms of wealth, such as public work or unpaid care work. In this respect, the capability approach has highlighted the direct contribution of educational work on capabilities. In *Human Capital and Human Capabilities*, for example, Sen distinguishes between education that enables people to become more productive and education that directly contributes to the enjoyment of freer lives (1997a, 1999, 48, 145). The capability approach has also emphasised the contribution of care work on the expansion of capabilities (Folbre 2006; UNDP 2015, 37). Folbre particularly addresses the inadequacy of distinguishing care work merely on the basis of whether it is paid and provided or not on the market, such as unpaid parental care. Measuring activities according to the income they generate on the market therefore overlooks that unpaid and non-market labour, including care work and voluntary work, can directly expand capabilities.

4.2 Labour Productivity and the Capabilities of Others

A consequence of emphasising the ability of productive labour to generate wealth has been to look at how to render it always more economically productive. In this respect, the division of labour and technological progress have greatly increased labour productivity. Have they expanded central capabilities to the same extent? For instance, the tractor historically increased labour productivity and for many, it expanded the central capability for food. By reducing the cost of food production, the tractor also made it possible for many people to work less (Autor 2015). As a result, it simultaneously expanded the capability for food and for recreational activities, two central capabilities in Nussbaum's list (Bueno 2017, 2019). By contrast, increasing labour productivity by automating the production of a luxury good that only a few can afford will not generally have these effects on capabilities.

Even when labour productivity is a synonym for creating some central capabilities more efficiently, production processes can reduce the capabilities of others. This can be illustrated be the example of pesticides. When focusing on labour productivity alone, the tractor story can be replaced by the pesticides story: by increasing labour productivity, pesticides also simultaneously contribute to the expansion of the central capabilities for food and for recreational activities. The picture looks different if the consequence of pesticides to cause

pollution and reduce the capability for water and for good health is considered. In terms of capabilities there is, therefore, a difference between the tractor and pesticides which is overlooked by the reliance on labour productivity (Bueno 2017, 484, 2019, 36).

Finally, the expansion of capabilities in the tractor and pesticides examples is made possible by the replacement of workers, impacting their capabilities *through* work presented in section 3 above. This capability deprivation can be far reaching. Indeed, the tractor and pesticides do not only save labour in the farms where these technologies are introduced; they also make it impossible for other farmers who cannot afford them to compete. Schumacher (1979; see also Weidel 2015) discussed this problem in the context of agriculture in developing countries, deploring that technology "becomes so capital costly that individuals have to already be rich before they can really do anything" (Schumacher 1979, 53). As Weidel concludes, it is not at all obvious that the gains from economic efficiency (cheaper items of consumption) are worth the human losses occasioned by unemployment (Weidel 2015, 8).

The conclusion of this section on socially capability-enhancing labour is that the capability approach would gain from a better understanding of the impacts of outputs and production processes of work (regardless of productive or unproductive) on the central capabilities of others. Beyond labour productivity, it should also focus more on the efficiency with which work creates those capabilities for others. The last section discusses some implications that the two concepts of individually and socially capability-enhancing work would have for labour law and labour policy. It shows that, ultimately, the goal of labour policy and the law implemeting it should be the efficient creation of capabilities through personally capability-enhancing work.

5. Implications for Labour Law and Labour Policy

The historical distinction between productive and unproductive labour has considerably influenced labour policies. Reference to productive work is common to most international labour and economic policy instruments, including the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation (ILO),[1] the Articles of Agreement of the International Monetary Fund[2] and the Agreement Establishing the World Trade Organization.[3] More recently, Sustainable Development Goal 8 is also about promoting "full and productive employment." The current approaches to labour policy remain concerned with ensuring a supply of labour to the productive sectors of the economy (Laruffa 2020).

The law reflects this productive logic, such as international labour law and international human rights law. For example, the human right to work in the Universal Declaration of Human Rights and in the International Covenant

on Economic, Social and Cultural Rights[4] requires that states adopt economic policies towards full and productive employment (Sarkin-Hughes and Koenig 2011; Bueno 2017; Branco 2019). The same holds true for the ILO Employment Policy Convention,[5] which obliges States to design and apply a policy designed to promote "full and productive work". This section explores an alternative labour policy towards more individually and socially capability-enhancing work and accordingly discusses new rights. It begins by presenting the existing debate on the capability approach to labour law.

5.1. The Capability Approach to Labour law and its Focus on the Individual

The capability approach to labour law is an emerging legal literature that aims to integrate the capability approach into labour law. Legal scholars are using this approach as a new normative framework for the assessment of labour rights. For Langille, this approach aims to liberate labour law from a constrictive and over-specified narrative of bargaining power between employers and employees (Langille 2019, 123). Labour law should not only set minimum working standards to regulate the labour markets. It should more comprehensively look at how labour rights can contribute to the development of workers' capabilities (Miles 2014, 1044; Del Punta 2019). Additionally, it critically addresses the exclusion of informal workers, although they represent the majority of workers in low-income countries (Routh 2014), and of unpaid workers (Supiot 2016, 77–9) from the traditional protection of labour law. As Supiot (2016, 78) acknowledges, labour law must become more inclusive to avoid being an elitist protection of the "happy few" with a formal contractual work relationship.

So far, the capability approach to labour law has focused on how to promote individually capability-enhancing labour as presented in Section 3. For example, it emphasises the role of labour rights that protect work as a means to achieve capabilities *through* work (Langille, 2019; Del Punta 2019, 94). In this respect, dangers are first posed by unemployment and other restrictions, such as discrimination in accessing the labour market, thus the importance of legally protecting access to work under the right to work (Deakin 2011, 172, 2019; Mantouvalou 2019, 213). Minimum wage provisions are also justified as capability-enhancing since fair pay is a necessary condition for people's capacity to be or to do what they value (Del Punta 2019, 94).

The approach also discusses how labour law can expand capabilities *in* work, the second relationship between work and capabilities discussed above. In this regard, Del Punta (2016, 2019) listed labour rights that enhance capabilities in work, such as working conditions compatible with the worker's health and safety, adequate occupational training and the capability to enjoy a sufficient amount of work-free time and other arrangements that make work time more flexible.

Finally, Mantouvalou (2019, 217) addressed the question of choice and meaning of work. For the capability approach, as she argues, it is not sufficient for work to be non-exploitative as it is the case in labour law. The capability approach lends support to the protection and development of personal relations at work and to the meaningfulness of work, which raises the question of labour rights guaranteeing a capability *for* meaningful work. In this respect, there exists only a rhetoric right to freely chose work in international labour and human rights law,[6] but this right is only limited to the prohibition of forced labour (Sarkin-Hughes and Koenig 2011; Bueno 2017). Although it would be impracticable to guarantee everyone personally meaningful work (Veltman 2016, 197; Weidel 2018) a right to freely choose work according to the capability approach should go beyond the prohibition of forced labour and beyond a right to choose a good quality job (Bonvin 2014, 181) if this work is meaningless for the worker (Bueno 2021).

The capability approach to labour law could gain from existing ideas on how to extend choice among different types of work. However, most of them have been discussed in the context of developed economies. Supiot (2016, 83) suggested for example extending the legal protection and social benefits that are currently linked to formal wage labour to non-market forms of labour, such as unpaid care work and voluntary work. In the same vein, Dermine and Dumont (2018, 69–75) suggested that the state should not only promote economically productive work but also value socially useful activities. Chamberlain (2018, 136) proposed to better protect and expand non-capitalist production, giving the examples of unpaid care work of family and friends, volunteer work by neighbours and cooperative enterprises. Rifkin (1995, 256) suggested a tax reduction for every hour of voluntary work in the non-profit sector (Rifkin, 256). Finally, Laruffa (2020, 6) suggested a social policy that focuses on the real freedom to choose among employment, care and active citizenship (or a combination of the three) without actively promoting employment as the best choice for individuals. The views all point to the need to create capabilities for work beyond productive market work (see also Steinvorth 2009).

The capability approach to labour law is sometimes criticised for its articulation of goals that do not lead to any concrete programmes (Davidov 2016, 33). The approach also sometimes restates labour rights that already exist in developed economies as capability-enhancing (Miles 2014, 1045) which raises the question of its added value. However, a focus on individual freedom contrasts with the traditional narrative of labour law, which presents workers as vulnerable and in need of protection. It is therefore a starting point to rethink the purpose of labour law in view to enhance capabilities through work, in work and for meaningful work. However, the narrative only covers individually capability-enhancing work. It should therefore also look at the impact of work on the capabilities of others.

5.2. Labour Law for Socially Capability-Enhancing Work

As presented in the introduction of this section, a traditional purpose of labour policy has been to promote productive work. In order to promote capabilities as well labour policy and labour law should also discuss the impact of work on the capabilities of others as presented in section 4. It should introduce a distinction between socially capability-enhancing and reducing work which would go into two directions.

On the one hand, the capability approach to labour law should address the legality of work outputs and production processes that reduce the capabilities of others. As presented above, some types of productive activities, such as speculating on food or house prices, can reduce central capabilities in particular of economically vulnerable individuals. The same is also true for production processes that aim to increase productivity, as illustrated with the example of pesticides above. Labour law nevertheless protects these activities because they are a form of productive work or because they increase economic productivity. When specific outputs and processes of work are more socially capability-reducing than others, how should labour policy and labour law react?

Although there is no easy answer to this question a growing body of literature in the legal and business ethics literature can inform the debate. In the business and human rights fields, scholars are looking at the responsibility of businesses to respect human rights (e.g. Bernaz 2016; Baumann-Pauly and Nolan 2016). With respect to labour rights in particular, this responsibility aims to ensure that businesses conduct due diligence in order to identify, prevent, and mitigate any negative impacts on fundamental labour rights (Bueno 2019). The approach could be extended to ensure that the work conducted by some does not diminish the central capabilities of others. The goal of this approach should not only be to compensate for the loss of capabilities, but to have a better understanding of the overall impact of productive work on the capabilities of others. If the output and processes of a productive activity are exclusively or mainly socially capability-reducing, there are strong reasons to question the legality of this activity in labour law or to create adequate compensation mechanisms.

On the other hand, labour law should also promote the efficiency with which nonmarket forms of work create capabilities for others (for food, housing, health and transportation, for example). This is not only true for unpaid care work or educational work as presented above. If society agrees on the importance to create specific central capabilities more efficienty through work labour law should promote activities that efficiently create capabilities regardless of whether there is a market for them. Examples of such activities are countless, such as non-chemical methods of farming, producing drugs that cure instead of merely reducing symptoms, legal services to protect housing rights of poor communities or building climate-neutral means of transportation. All are examples of activities that can be socially capability-enhancing but that the current

organisation of labour does not permit, not by lack of brains who would find these tasks meaningful, but because these activities are not productive or not productive enough to be competitive in the market. This leads to a waste of human potential in terms of capabilities.

5.3. Freedom from Work as the Potential of a Capability-Informed Labour Policy

The capability approach can help formulate a labour policy that thinks beyond productive work. Arguably, the goal of a capability-informed labour policy should aim to expand individual capabilities through work, in work and for meaningful work. At the same time, it should also ensure that outputs and processes of work expand capabilities of others, and this in an efficient manner. It should therefore better align individually and socially capability-enhancing work. The fact that these two aspects of work are not aligned have at least two negative consequences on capabilities.

One the one hand, some people might find it personally more meaningful to conduct an activity that expands the human capabilities of others rather than a job that is merely economically productive (see Veltman 2016; Schumacher 1979). This might be the case of the lawyer who would prefer using legal skills to advise poor communities affected by water pollution rather than the polluting company, in the example presented above. This legal skill might be lost if the lawyer is not ready or cannot advise *pro bono*. Economic opportunities in the labour market therefore sometimes hinders skills to be used to create capabilities for others. As a result, some human potential is wasted for both individuals and society to flourish (Bueno 2017, 480). Labour policy should evaluate this loss and create opportunities for personally capability-enhancing labour that is also socially capability-enhancing.

On the other hand, the labour market sometimes selects socially capability-reducing labour as illustrated above. The situation becomes even more problematic when the labour market forces workers to accept work that is personally capability-reducing, such as low-paid or unhealthy work, that in addition reduces capabilities of others. A capability-informed labour policy should therefore better identify this lose-lose situation that the labour market can create for the worker and at the collective level.

Identifying these two aspects could lead to a more efficient creation of capabilities through work. Ultimately, creating capabilities more efficiently could reduce the need to work to achieve them and therefore expand our freedom from work (Bueno 2021). Indeed people currently work in the first place to have central capabilities as outlined above under the concept of capabilities *through* work. Some workers, in particular low-income formal or informal workers, work exclusively for achieving central capabilities. Liberating from the economic need to work is currently overlooked in existing labour policies. In this regard, the

capability-informed labour policy proposed in this article shows that by wasting the potential of those willing to create capabilities for others and by sometimes selecting socially capability-reducing work, the way we currently create capabilities (for which we must work) is inefficient (Bueno, 2017; 2021). Labour policies oriented towards productive work might well make us work more than necessary.

6. Conclusion

This article is an invitation to discuss what makes work useful, on what grounds and for whom. By focusing exclusively on the ability of productive labour to generate wealth for the economy as a whole, classical economists and neo-classical marginalists greatly influenced current labour policy. Beyond the distinction between productive and productive labour, this article shows that the capability approach can bring a more human-centred distinction between capability-enhancing and capability-reducing work. This notion has an individual and a collective dimension.

So far, the capability approach has mainly been concerned with the impact of work on the worker's capabilities at the individual level. It provides a picture of what can be considered as *personally* capability-enhancing labour. The approach would gain from better analysing what makes work *socially* capability-enhancing as well. In this respect, this article discusses the inaccurate distinction between productive and unproductive labour. What is more relevant is whether and to what extent the outputs and production processes of work (economically productive or unproductive) enhance or reduce human capabilities of others.

Rethinking the individual and societal value of work in terms of capabilities has implications for labour law and policy. Beyond encouraging productive work, the capability-informed labour policy proposed in this article aims to promote and better align personally and socially capability-enhancing labour. At the individual level, it should build on rights discussed in the capability approach to labour law to guarantee that workers have capabilities *through* work, *in* work and *for* meaningful work. At the societal level, the proposed labour policy should aim at improving the efficiency with which we create capabilities for which we must currently work, which could progressively free from the economic need to work. Implementing this labour policy requires new rights that expand individual opportunities to choose work that enhance the capabilities of others beyond the market. This also requires identifying and questioning the legality of productive work that reduce capabilities of others for which they must work.

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Notes on contributors

Prof. Dr. *Nicolas Bueno* is Assistant Professor in International and European Labour at the Swiss Distance University. He conducted this research as principal investigator at the University of Zurich in the research project "Human Economy: Rethinking Economic Rightsin the Global Economy". This project is funded by an Ambizione grant from the Swiss National Research Foundation. Prof. Dr. Bueno published extensively on labour rights and on the right to work in particular in international journals, such as the *International Labour Review* or the *Journal of Human Rights*. His article "From the Right to Work to Freedom from Work: Introduction to the Human Economy" published in the *International Journal of Comparative Labour Law and Industrial Relations* was awarded the Marco Biagi best-paper award 2017 by the International Association of Labour Law Journals.

Notes

1. Article IV.
2. Article I(ii).
3. Preamble.
4. In articles 23(1) and 6, respectively.
5. Article 1.
6. For example in article 23(1) of the Universal Declaration of Human Rights.

ORCID

Nicolas Bueno http://orcid.org/0000-0002-1476-5456

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